

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GIOVANNI SALAZAR,

Plaintiff,

vs.

No. CIV 23-0328 JB/KRS

THE BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF
BERNALILLO; JASON JONES; and
YESCARE,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court following Plaintiff Giovanni Salazar’s failure to prosecute his pro se Amended Complaint for Violation of Civil Rights, filed April 28, 2023 (Doc. 4)(“Amended Complaint”). The Honorable Kevin Sweazea, United States Magistrate Judge for the United States District Court of the District of New Mexico, recently directed Salazar to update his address or show cause why the Court should not dismiss the Amended Complaint for severing contact with the Court. See Order to Show Cause, filed October 28, 2024 (Doc. 9)(“OSC”). Because Salazar has not complied with the OSC, and having reviewed applicable law and the record, the Court dismisses the Amended Complaint without prejudice and closes the case.

BACKGROUND

Salazar commenced this case on April 17, 2023, by filing a letter from Giovanni Salazar to the “United States clerk [sic],” requesting forms to file a 42 U.S.C. § 1983 pro se Prisoner’s Civil Rights Claim. See Letter from Giovanni Salazar at 1, filed April 17, 2023 (Doc. 1)(“§ 1983 Complaint Request”). The Clerk’s Office mailed Salazar a blank civil rights complaint. See

Clerk's Office Staff Note, filed April 17, 2023. The Court referred this matter to Magistrate Judge Sweazea for recommended findings and disposition, and to enter non-dispositive orders. See Order of Reference Relating to Prisoner Cases, filed April 18, 2023 (Doc. 3). Salazar filed the Amended Complaint on April 28, 2023, which challenges Salazar's conditions of confinement at the Metropolitan Detention Center ("MDC"). See Amended Complaint at 1-8.

After Salazar filed the Amended Complaint, he severed contact with the Court following his release from MDC, and he has not updated his address as rule 83.6 of the District of New Mexico's local civil rules requires. See D.N.M.LR-Civ. 83.6 ("All . . . parties appearing pro se have a continuing duty to notify the Clerk, in writing, of any change in their . . . mailing addresses."). By an OSC entered October 28, 2024, Magistrate Judge Sweazea fixed a deadline of November 27, 2024, for Salazar to confirm his address in writing or show cause why this action should not be dismissed. See OSC at 1. The OSC warns that the failure to comply timely may result in dismissal of this case without further notice. See OSC at 1.

Salazar did not update his address by the November 27, 2024, deadline, show cause for such failure, or otherwise respond to the OSC, which MDC returned as deliverable with the notation: "NOT IN CUSTODY." Returned Mail Envelope, filed November 12, 2024 (Doc. 10). The Court, therefore, will consider whether to dismiss this matter for lack of prosecution, and for failure to comply with rules and orders.

ANALYSIS

Rule 41(b) of the Federal Rules of Civil Procedure authorizes the involuntary dismissal of an action "[i]f the plaintiff fails to prosecute or to comply with the [Federal Rules of Civil Procedure] or a court order." Fed. R. Civ. P. 41(b). See Reed v. Bennett, 312 F.3d 1190, 1195 (10th Cir. 2002)("A district court undoubtedly has discretion to sanction a party for failing to

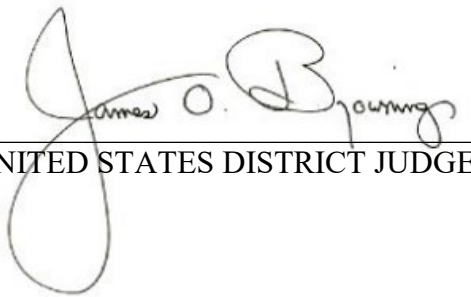
prosecute or defend a case, or for failing to comply with local or federal procedural rules.”). As the United States Court of Appeals for the Tenth Circuit explains, “the need to prosecute one’s claim (or face dismissal) is a fundamental precept of modern litigation” Rogers v. Andrus Transp. Services, 502 F.3d 1147, 1152 (10th Cir. 2007). “Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court[s’] orders.” Olsen v. Mapes, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003).

“Dismissals pursuant to Rule 41(b) may be made with or without prejudice.” Davis v. Miller, 571 F.3d 1058, 1061 (10th Cir. 2009). If dismissal is made without prejudice, “a district court may, without abusing its discretion, enter such an order without attention to any particular procedures.” Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Justice Center, 492 F.3d 1158, 1162 (10th Cir. 2016). Because “[d]ismissing a case with prejudice, however, is a significantly harsher remedy -- the death penalty of pleading punishments -- [the Tenth Circuit has] held that, for a district court to exercise soundly its discretion in imposing such a result, it must first consider certain criteria.” Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Justice Center, 492 F.3d at 1162. Those criteria include: “the degree of actual prejudice to the defendant; the amount of interference with the judicial process; the culpability of the litigant; whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and the efficacy of lesser sanctions.” Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Justice Center, 492 F.3d at 1162.

Here, Salazar has not provided an updated address, as the OSC and D.N.M.LR-Civ. 83.6 require. In light of this failure, the Court dismisses this case pursuant to rule 41(b) for failure to prosecute. See Olsen v. Mapes, 333 F.3d 1199 at 1204. After considering the factors in Nasious

v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Justice Center, the dismissal will be without prejudice for refiling.

IT IS ORDERED that: (i) the Plaintiff's Amended Complaint for Violation of Civil Rights, filed April 28, 2023 (Doc. 4), is dismissed without prejudice; and (ii) the Court will enter a separate Final Judgment disposing of this civil case.


UNITED STATES DISTRICT JUDGE

Parties:

Giovanni Salazar
Albuquerque, New Mexico

Plaintiff pro se